

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Michael Landers,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:13cv838
vs.	:	
	:	Chief Judge Susan J. Dlott
Warden, Southern Ohio Correctional Facility,	:	
	:	
Respondent(s).	:	

ORDER

The Court has reviewed the Report and Recommendation of United States Magistrate Judge Stephanie K. Bowman filed on November 25, 2014 (Doc. 9), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired December 12, 2014, hereby ADOPTS said Report and Recommendation.

Accordingly, petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 (Doc. 1) is **DENIED** with prejudice.

A certificate of appealability will not issue with respect to the claim alleged in Ground Two of the petition, which the Court has concluded is waived and thus procedurally barred from review since under the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), "jurists of reason" will not find it debatable whether the Court is correct in its procedural ruling or whether petitioner has stated a viable constitutional claim in the defaulted ground for relief.

A certificate of appealability will issue, however, with respect to the non-defaulted sufficiency-of-evidence claim alleged in Ground One, which is "adequate to deserve

encouragement to proceed further.” *See Slack*, 529 U.S. at 475 (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)); *see also* 28 U.S.C. § 2253 (c); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. §1915(a)(3) that an appeal of any order adopting the Report and Recommendation to deny relief based on petitioner’s claim in Ground One challenging the sufficiency of the evidence supporting his aggravated robbery conviction will be taken in “good faith” and, therefore **GRANT** petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Chief Judge Susan J. Dlott
United States District Court